

IC 35-33-5

Chapter 5. Search and Seizure

IC 35-33-5-1

Issuance by court; probable cause; oath and affirmation; "place" defined; objects of search

Sec. 1. (a) A court may issue warrants only upon probable cause, supported by oath or affirmation, to search any place for any of the following:

- (1) Property which is obtained unlawfully.
- (2) Property, the possession of which is unlawful.
- (3) Property used or possessed with intent to be used as the means of committing an offense or concealed to prevent an offense from being discovered.
- (4) Property constituting evidence of an offense or tending to show that a particular person committed an offense.
- (5) Any person.
- (6) Evidence necessary to enforce statutes enacted to prevent cruelty to or neglect of children.

(b) As used in this section, "place" includes any location where property might be secreted or hidden, including buildings, persons, or vehicles.

As added by Acts 1981, P.L.298, SEC.2. Amended by Acts 1982, P.L.204, SEC.10.

IC 35-33-5-2

Affidavit; descriptions; information to establish credibility of hearsay; form

Sec. 2. (a) Except as provided in section 8 of this chapter, no warrant for search or arrest shall be issued until there is filed with the judge an affidavit:

- (1) particularly describing:
 - (A) the house or place to be searched and the things to be searched for; or
 - (B) particularly describing the person to be arrested;
 - (2) alleging substantially the offense in relation thereto and that the affiant believes and has good cause to believe that:
 - (A) the things as are to be searched for are there concealed; or
 - (B) the person to be arrested committed the offense; and
 - (3) setting forth the facts then in knowledge of the affiant or information based on hearsay, constituting the probable cause.
- (b) When based on hearsay, the affidavit must either:
- (1) contain reliable information establishing the credibility of the source and of each of the declarants of the hearsay and establishing that there is a factual basis for the information furnished; or
 - (2) contain information that establishes that the totality of the circumstances corroborates the hearsay.

(c) An affidavit for search substantially in the following form shall be treated as sufficient:

STATE OF INDIANA)
) SS:
COUNTY OF _____)

AB swears (or affirms, as the case may be) that he believes and has good cause to believe (here set forth the facts and information constituting the probable cause) that (here describe the things to be searched for and the offense in relation thereto) are concealed in or about the (here describe the house or place) of C D, situated in the county of _____, in said state.

Subscribed and sworn to before me this ____ day of _____ 19__.

As added by Acts 1981, P.L.298, SEC.2. Amended by P.L.177-1984, SEC.1; P.L.161-1990, SEC.1; P.L.1-1991, SEC.190.

IC 35-33-5-3

Form

Sec. 3. A search warrant in substantially the following form shall be sufficient:

STATE OF INDIANA)
) SS:
COUNTY OF _____) IN THE _____ COURT
OF _____

To _____ (herein insert the name, department or classification of the law enforcement officer to whom it is addressed)

You are authorized and ordered, in the name of the State of Indiana, with the necessary and proper assistance to enter into or upon _____ (here describe the place to be searched), and there diligently search for _____ (here describe property which is the subject of the search). You are ordered to seize such property, or any part thereof, found on such search.

Dated this ____ day of _____, 19__, at the hour of ____ M.

(Signature of Judge)

Executed this ____ day of _____, 19__, at the hour of ____ M.

(Signature of Law Enforcement Officer)

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-5-4

Return; initial disposition of property seized

Sec. 4. When the warrant is executed by the seizure of property or things described in it or of any other items:

(1) The officer who executed the warrant shall make a return on it directed to the court or judge, who issued the warrant, and this return must indicate the date and time served and list the items seized.

(2) The items so seized shall be securely held by the law enforcement agency whose officer executed the search warrant

under the order of the court trying the cause, except as provided in section 6 of this chapter.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-5-5

Disposition of property held as evidence; records

Sec. 5. (a) All items of property seized by any law enforcement agency as a result of an arrest, search warrant, or warrantless search, shall be securely held by the law enforcement agency under the order of the court trying the cause, except as provided in this section.

(b) Evidence that consists of property obtained unlawfully from its owner may be returned by the law enforcement agency to the owner before trial, in accordance with IC 35-43-4-4(h).

(c) Following the final disposition of the cause at trial level or any other final disposition the following shall be done:

(1) Property which may be lawfully possessed shall be returned to its rightful owner, if known. If ownership is unknown, a reasonable attempt shall be made by the law enforcement agency holding the property to ascertain ownership of the property.

After ninety (90) days from the time:

(A) the rightful owner has been notified to take possession of the property; or

(B) a reasonable effort has been made to ascertain ownership of the property;

the law enforcement agency holding the property shall, at such time as it is convenient, dispose of this property at a public auction. The proceeds of this property shall be paid into the county general fund.

(2) Except as provided in subsection (e), property, the possession of which is unlawful, shall be destroyed by the law enforcement agency holding it sixty (60) days after final disposition of the cause.

(d) If any property described in subsection (c) was admitted into evidence in the cause, the property shall be disposed of in accordance with an order of the court trying the cause.

(e) A law enforcement agency may destroy or cause to be destroyed chemicals or controlled substances associated with the illegal manufacture of drugs or controlled substances without a court order if all the following conditions are met:

(1) The law enforcement agency collects and preserves a sufficient quantity of the chemicals or controlled substances to demonstrate that the chemicals or controlled substances were associated with the illegal manufacture of drugs or controlled substances.

(2) The law enforcement agency takes photographs of the illegal drug manufacturing site that accurately depict the presence and quantity of chemicals and controlled substances.

(3) The law enforcement agency completes a chemical inventory report that describes the type and quantities of chemicals and controlled substances present at the illegal manufacturing site.

The photographs and description of the property shall be admissible

into evidence in place of the actual physical evidence.

(f) For purposes of preserving the record of any conviction on appeal, a photograph demonstrating the nature of the property, and an adequate description of the property must be obtained before the disposition of it. In the event of a retrial, the photograph and description of the property shall be admissible into evidence in place of the actual physical evidence. All other rules of law governing the admissibility of evidence shall apply to the photographs.

(g) The law enforcement agency disposing of property in any manner provided in subsection (b), (c), or (e) shall maintain certified records of any such disposition. Disposition by destruction of property shall be witnessed by two (2) persons who shall also attest to the destruction.

(h) This section does not affect the procedure for the disposition of firearms seized by a law enforcement agency.

(i) A law enforcement agency that disposes of property by auction under this section shall permanently stamp or otherwise permanently identify the property as property sold by the law enforcement agency.

(j) Upon motion of the prosecuting attorney, the court shall order property seized under IC 34-24-1 transferred, subject to the perfected liens or other security interests of any person in the property, to the appropriate federal authority for disposition under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21 U.S.C. 881(e) and any related regulations adopted by the United States Department of Justice.

As added by Acts 1981, P.L.298, SEC.2. Amended by P.L.320-1983, SEC.6; P.L.294-1989, SEC.1; P.L.174-1999, SEC.2; P.L.17-2001, SEC.11.

IC 35-33-5-5.1

Gambling devices seized; return to owner

Sec. 5.1. Notwithstanding section 5 of this chapter, if:

- (1) property alleged to be a gambling device:
 - (A) was seized by a law enforcement agency; and
 - (B) has been in the custody of a law enforcement agency for more than one (1) year;
- (2) no criminal charges have been filed for which the property is necessary as evidence; and
- (3) the owner of the property requests in writing that it be returned;

the property shall be promptly returned to the owner.

As added by P.L.321-1983, SEC.1.

IC 35-33-5-6

Dead body; search of building or place; affidavit

Sec. 6. When an affidavit is filed before a judge alleging that the affiant has good reasons to believe, and does believe, that a dead human body is illegally secreted in a certain building, or other particularly specified place in the county, the judge may issue a search warrant authorizing a law enforcement officer to enter and search the building or other place for the dead body. While making the search, the law enforcement officer shall have the power of an officer executing a

regular search warrant.
As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-5-7

Execution of search warrant; forcible entry; wrongful entry; recovery of damages

Sec. 7. (a) A search warrant issued by a court of record may be executed according to its terms anywhere in the state. A search warrant issued by a court that is not a court of record may be executed according to its terms anywhere in the county of the issuing court.

(b) A search warrant must be:

- (1) executed not more than ten (10) days after the date of issuance; and
- (2) returned to the court without unnecessary delay after the execution.

(c) A search warrant may be executed:

- (1) on any day of the week; and
- (2) at any time of the day or night.

(d) A law enforcement officer may break open any outer or inner door or window in order to execute a search warrant, if he is not admitted following an announcement of his authority and purpose.

(e) A person or persons whose property is wrongfully damaged or whose person is wrongfully injured by any law enforcement officer or officers who wrongfully enter may recover such damage from the responsible authority and the law enforcement officer or officers as the court may determine. The action may be filed in the circuit court, superior court or county court in the county where the wrongful entry took place.

As added by Acts 1981, P.L.298, SEC.2. Amended by P.L.320-1983, SEC.7.

IC 35-33-5-8

Issue of warrant without affidavit; types of sworn testimony; procedures; perjury

Sec. 8. (a) A judge may issue a search or arrest warrant without the affidavit required under section 2 of this chapter, if the judge receives sworn testimony of the same facts required for an affidavit:

- (1) in a nonadversarial, recorded hearing before the judge;
- (2) orally by telephone or radio; or
- (3) in writing by facsimile transmission (FAX).

(b) After reciting the facts required for an affidavit and verifying the facts recited under penalty of perjury, an applicant for a warrant under subsection (a)(2) shall read to the judge from a warrant form on which the applicant enters the information read by the applicant to the judge. The judge may direct the applicant to modify the warrant. If the judge agrees to issue the warrant, the judge shall direct the applicant to sign the judge's name to the warrant, adding the time of the issuance of the warrant.

(c) After transmitting an affidavit, an applicant for a warrant under subsection (a)(3) shall transmit to the judge a copy of a warrant form completed by the applicant. The judge may modify the transmitted

warrant. If the judge agrees to issue the warrant, the judge shall transmit to the applicant a duplicate of the warrant. The judge shall then sign the warrant retained by the judge, adding the time of the issuance of the warrant.

(d) If a warrant is issued under subsection (a)(2), the judge shall record the conversation on audio tape and order the court reporter to type or transcribe the recording for entry in the record. The judge shall certify the audio tape, the transcription, and the warrant retained by the judge for entry in the record.

(e) If a warrant is issued under subsection (a)(3), the judge shall order the court reporter to retype or copy the facsimile transmission for entry in the record. The judge shall certify the transcription or copy and warrant retained by the judge for entry in the record.

(f) The court reporter shall notify the applicant who received a warrant under subsection (a)(2) or (a)(3) when the transcription or copy required under this section is entered in the record. The applicant shall sign the typed, transcribed, or copied entry upon receiving notice from the court reporter.

As added by P.L.161-1990, SEC.2.